

ARKANSAS SUPREME COURT

No. CR 08-1029

JOHN H. BOLDIN
Appellant

v.

STATE OF ARKANSAS
Appellee

Opinion Delivered November 20, 2008

APPELLEE'S MOTION TO DISMISS
APPEAL [CIRCUIT COURT OF
LOGAN COUNTY, NORTHERN
DISTRICT, CR 2005-100, HON.
ELIZABETH DANIELSON, JUDGE]

MOTION GRANTED; APPEAL
DISMISSED.

PER CURIAM

In 2007, appellant John H. Boldin was found guilty by a jury of murder in the first degree and aggravated robbery and sentenced to consecutive terms of life and forty years' imprisonment. We affirmed. *Boldin v. State*, 373 Ark. 295, ___ S.W.3d ___ (2008).

On July 25, 2008, appellant filed in the trial court a pro se petition for postconviction relief pursuant to Arkansas Rule of Criminal Procedure 37.1. The petition was denied, and appellant lodged an appeal here from the order. Now before us is a motion filed by the appellee State asking that the appeal be dismissed on the ground that the Rule 37.1 petition was not timely filed.

The motion is granted. An appeal of the denial of postconviction relief will not be permitted to go forward where it is clear that the appellant could not prevail. *Booth v. State*, 353 Ark. 119, 110 S.W.3d 759 (2003) (per curiam). It is clear from the record lodged in this appeal that appellant's

Rule 37.1 petition was not timely filed and, as a result, he cannot prevail on appeal.¹

Where the judgment of conviction was affirmed on appeal, Arkansas Rule of Criminal Procedure Rule 37.2(c) requires that the petition for postconviction relief be filed within sixty days of the issuance of the appellate court's mandate. In appellant's case, the mandate was issued on May 13, 2008, and the Rule 37.1 petition was filed seventy-three days later. The time limitations imposed in Rule 37.2(c) are jurisdictional in nature, and the circuit court may not grant relief on an untimely petition. *Womack v. State*, 368 Ark. 341, 245 S.W.3d 154 (2006) (per curiam).

Motion granted; appeal dismissed.

Danielson, J., not participating.

¹While the circuit court's order was founded on the untimely filing of the petition, the petition exceeded the page-limit set forth in Arkansas Rule of Criminal Procedure 37.1(b). It was thus subject to dismissal on that basis even if it had been timely filed.